

HOUSE BILL 575

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; PROVIDING FOR PARTICIPATION IN
NEGOTIATIONS ON THE STREAMLINED SALES TAX AGREEMENT; CREATING
REQUIREMENTS FOR PARTICIPATION IN THE AGREEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Streamlined Sales and Use Tax Administration Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds
that a simplified sales tax and use tax system that treats
transactions in a competitively neutral manner will strengthen
and preserve sales taxes and use taxes as vital revenue sources
for this state and its local governments and will help preserve
the fiscal sovereignty of this state. The legislature also
finds that such a system will substantially reduce the
administrative burdens of collection for sellers. While states

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1 have the sovereign right to set their own tax policies, states
2 should cooperatively develop a streamlined sales tax and use
3 tax system that is simplified, uniform and fair.

4 Section 3. DEFINITIONS.--As used in the Streamlined Sales
5 and Use Tax Administration Act:

6 A. "agreement" means the streamlined sales and use
7 tax agreement;

8 B. "certified automated system" means software
9 certified jointly by member states to:

10 (1) calculate the sales tax imposed by each
11 jurisdiction on a transaction;

12 (2) determine the amount of tax to remit to
13 the appropriate state; and

14 (3) maintain a record of the transaction;

15 C. "certified service provider" means an agent that
16 performs all of the sales tax functions of a seller and that is
17 certified jointly by member states to perform all of the sales
18 tax functions of the seller;

19 D. "member state" means a state of the United
20 States that enters into the agreement with another state and
21 the District of Columbia if it enters into the agreement with
22 another state;

23 E. "person" means an individual, trust, estate,
24 fiduciary, partnership, limited liability company, limited
25 liability partnership, corporation and any other legal entity;

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1 F. "sales tax" means the gross receipts tax levied
2 pursuant to the Gross Receipts and Compensating Tax Act or a
3 tax imposed by a state on the sale of goods or services;

4 G. "seller" means a person making sales, leases and
5 rentals of personal property and services; and

6 H. "use tax" means the compensating tax levied
7 pursuant to the Gross Receipts and Compensating Tax Act.

8 Section 4. AUTHORITY TO ENTER AGREEMENT.--

9 A. The secretary of taxation and revenue may enter
10 into the agreement with one or more member states to simplify
11 and modernize sales tax and use tax administration and to
12 reduce the burden of tax compliance for sellers.

13 B. The secretary of taxation and revenue is
14 authorized to:

15 (1) act jointly with member states to
16 establish standards for a certified automated system and
17 establish performance standards for multistate sellers pursuant
18 to the agreement;

19 (2) take actions reasonably required to
20 implement the provisions of the Streamlined Sales and Use Tax
21 Administration Act; and

22 (3) adopt rules with member states pursuant to
23 the agreement.

24 C. The secretary of taxation and revenue or the
25 secretary's designee is authorized to represent this state

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1 before member states.

2 Section 5. RELATIONSHIP TO STATE LAW.--A provision of the
3 agreement does not invalidate or amend any provision of state
4 law. Implementation of a condition of the agreement shall be
5 adopted by the legislature.

6 Section 6. AGREEMENT REQUIREMENTS.--The secretary of
7 taxation and revenue shall not enter into the agreement unless
8 the agreement:

9 A. sets restrictions to achieve more uniform state
10 tax rates by limiting:

- 11 (1) the number of member state tax rates;
12 (2) the application of maximums on the amount
13 of member state taxes due on transactions; and
14 (3) the application of thresholds on the
15 application of member state taxes;

16 B. establishes uniform standards for:

- 17 (1) sourcing transactions to taxing
18 jurisdictions;
19 (2) administering exempt sales; and
20 (3) providing allowances that a seller can
21 receive for bad debts;

22 C. requires member states to develop and adopt
23 uniform definitions of sales tax and use tax terms that enable
24 the member states to make policy choices consistent with the
25 definitions;

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1 D. provides for a certified automated system that
2 allows a seller to register to collect and remit sales taxes
3 and use taxes for each member state;

4 E. provides that registration with the certified
5 automated system and the collection of a sales tax and a use
6 tax in a member state will not be used to determine if the
7 seller has a nexus with a member state for tax purposes;

8 F. provides for reduction of the burden of
9 complying with local sales taxes and use taxes by:

10 (1) restricting variances between the member
11 state and local tax bases;

12 (2) requiring each member state to administer
13 the sales tax and use tax levied by a local jurisdiction within
14 the member state so that a seller collecting and remitting the
15 taxes will not be required to register or file a return with,
16 remit funds to or be subject to an independent audit from a
17 local taxing jurisdiction;

18 (3) restricting change in each local sales tax
19 rate and use tax rate and setting an effective date for a
20 change in the boundaries of a local taxing jurisdiction; and

21 (4) providing notice of a change in each local
22 sales tax rate and use tax rate and of a change in the
23 boundaries of a local taxing jurisdiction;

24 G. outlines monetary allowances provided by member
25 states to sellers and certified service providers;

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1 H. requires each state to certify compliance with
2 the terms of the agreement before becoming a member state and
3 to maintain compliance with provisions of the agreement
4 pursuant to the law of the member state while a member state;

5 I. requires each member state to adopt a uniform
6 policy for certified service providers that protects the
7 privacy of consumers and maintains the confidentiality of tax
8 information; and

9 J. provides for the appointment of an advisory
10 council of private sector representatives and an advisory
11 council of nonmember state representatives with which to
12 consult with respect to the administration of the agreement.

13 Section 7. MEMBER STATES.--The agreement is an accord
14 among member states in furtherance of their governmental
15 functions. The agreement permits each member state to
16 establish and maintain a cooperative, uniform, simplified
17 system to apply sales taxes and use taxes pursuant to the law
18 of the member state.

19 Section 8. LIMITED BINDING AND BENEFICIAL EFFECT.--

20 A. The agreement binds and benefits only this state
21 and other member states. Only a member state is an intended
22 beneficiary of the agreement. A benefit to a person other than
23 a member state is established by the law of this state and
24 member states and not by the terms of the agreement.

25 B. A person shall not:

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1 (1) have a cause of action or a defense
2 pursuant to the agreement; and

3 (2) challenge an action or inaction of a
4 department, agency, political subdivision or instrumentality of
5 this state on the grounds that the action or inaction is not
6 consistent with the agreement.

7 C. A law of this state or the application of the
8 law is valid despite the inconsistency of the law or its
9 application with the agreement.

10 Section 9. LIABILITY.--

11 A. A certified service provider is liable for sales
12 taxes and use taxes due from each member state on each sales
13 transaction that it processes for the seller, except as
14 otherwise provided by this section. A seller that contracts
15 with the certified service provider is not liable to this state
16 for sales tax or use tax due on a transaction processed by the
17 certified service provider unless the seller misrepresents the
18 type of item it sells or commits fraud. In the absence of
19 probable cause that the seller has committed fraud or made a
20 material misrepresentation, the seller is not subject to audit
21 on transactions processed by the certified service provider. A
22 seller is subject to audit for a transaction not processed by
23 the certified service provider. Member states acting jointly
24 may:

25 (1) audit data pertaining to the seller that

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1 is stored in the certified automated system; and

2 (2) review procedures of the seller to
3 determine if the certified automated system functions properly
4 and the extent to which the transactions of the seller are
5 processed by this certified service provider.

6 B. A certified service provider is responsible for
7 the proper functioning of a certified automated system and is
8 liable to this state for underpayments of tax attributable to
9 system errors. A seller that uses a certified automated system
10 is liable to this state for reporting and remitting tax.

11 C. A seller that has a proprietary system for
12 determining the amount of tax due on a transaction and has
13 agreed to establish a performance standard for the system is
14 liable for failure of the system to meet the standard.